

Exhibit 4

STANDARDIZATION OF THE
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STANDARDIZATION OF THE
QUARTERMASTER'S

MEMORANDUM FOR THE
MAJOR'S OFFICE
FOR THE
AND

October 15, 1978

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The extraordinary claim made in this case -- namely, that the biography of a public figure such as a film star violates some rights belonging to her estate -- is far fetched, to say the least. If such a claim were sustained, there could be no biographies, nor any kind of objective magazines, nor only biographies authorized by the subjects thereof, could be published). Our newspapers and newsmagazines would also have to close their doors, for the heart of any newspaper or newsmagazine is the report of the statements and actions of such public figures, accompanied by their photographs.

Common sense tells us that such a notion is absurd on its face. For in this area, common sense and legal principles fully coincide. As discussed above, the law is quite clear that neither a "right of public life" nor any other right gives a public figure or witness the right to sue for disclosure or publication of such biographical materials. In considering further the specific claims made in this case, it may be helpful to review briefly the nature of the right of publicity relied upon by plaintiff and the law of privacy from which it derives.

A relatively new concept in the law, the right of privacy has developed slowly since the appearance in 1890 of a law review article by Samuel D. Warren and Louis D. Brandeis urging the recognition of such a right. See Warren & Brandeis, "The Right to Privacy," 4 *Harv. L. Rev.* 193 (1890). The right of privacy is now recognized, in some degree, at least, by nearly all of the states. Prosser, *Law of Torts* §17, at 804 (4th ed. 1971).

In fact, the phrase "invasion of privacy" covers four separate though somewhat related torts, which Dean Prosser has labelled "intrusion," "public disclosure of private facts," "false light in the public eye" and "appropriation." Prosser's categorization and description of these four torts have been

mistakenly. The California Police Journal was started
precisely because the Los Angeles Times had found
that an individual had a common law right against the
commercial use of his name in a series of Roberson v. Marvel
Folding Sales, 174 Cal. 439, 163 P. 2d 105 (1945).
It follows that the Court accepted a void repeal Roberson
and recognize such Personality Right here. Repeal a new
name is now granted to all persons in Personality Posters,
59 Misc. 2d 614 (1958), 122 Misc. 2d 104 (1958) and in Roberson
v. Doyle, Dunn & Bernhart, 35 Cal. 2d 851, 22 Cal. 2d 784 (1954),
Dept. 1877). However, for the purposes of this motion, and
only for the purposes of this motion, it will be assumed that
a common-law right to one's name would be recognized in New

The primary significance of such a common-law right of publicity is and the only reason why it was necessary to reach the question of a common-law right in the Tobacco Chewing Gum case and the subsequent Idol cases -- is that the statutory right is purely personal right. It cannot be assigned (Rosemont Enterprises, Inc. v. Urban Systems, Inc., 72 Misc.2d 788 (Sup. Ct. N.Y. City, 1973)) and it does not survive the death of the individual whose name or likeness is used (Schumann v. Loew's Inc., 135 N.Y.2d 361 (Sup. Ct.

right of publicity. The purported right of publicity recognized in the federal cases, if it is a right, was only a common-law right, not a statutory right. See Parsons v. State Ind. Bd. of Arts, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025.

But even if such a common-law right of publicity exists in New York and is enforceable, it cannot and does not preclude the publication of a biography such as the book involved in this case. As will be demonstrated in detail below, this principle is well established and fully disposes of plaintiff's claim.

POINT 1: THE RIGHT OF PUBLICITY IS INAPPLICABLE TO BIOGRAPHIES AND OTHER PUBLICATIONS OF PUBLIC INTEREST

Paragraph 6 of the Complaint describes the right allegedly infringed as merely the right of publicity. (A copy of the Complaint is Exhibited to the Curtis moving affidavit.) It contains no reference to any infringement of the statutory right of privacy. This is understandable since, as noted above, any such right of privacy was personal to Marilyn Monroe and terminated upon her death. By contrast, Response No. 4 to plaintiff's Bill of Particulars (Exhibit C to the Curtis affidavit) refers to both the federal cases

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Both the Supreme Court and Federal Circuit in sections 55 and 56 of the new Intellectual Property and Patent Reform Act of 2011, which are codified in the Federal Courts and Administration Act, 2011, are limited by the provisions of the Patent Act of 1986. The Supreme Court's decision in *Amgen v. Hoechst Celanese*, 536 U.S. 318 (2002), is a landmark decision in the area of patent law, and is a landmark decision in the area of patent law. The Supreme Court's decision in *Amgen v. Hoechst Celanese*, 536 U.S. 318 (2002), is a landmark decision in the area of patent law, and is a landmark decision in the area of patent law.

Plaintiffs' Exhibit 10, the "producers also rulers" in section 52 of the Code, is in fact, no less than, that this is a notational error, since section 52 has no possible relevance to the subject matter of the regulation.

We are concerned here with the right against commercial appropriation of name and likeness which Professor called "appropriation" and others, more recently, have referred to as the right of publicity. As noted above, this is only one of four torts falling under the privacy "umbrella." Miss Monroe were still alive and if a purposefully fictionalized biography of her were published that would be actionable under the "false light" tort recognized as part of the law of privacy. But that is not the situation here. See Point 7, *infra*.

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"Moreover, even when the use of a trademark in publication is not for the purpose of advertising, it is a dominant reason why the trademark is exploited. Essentially even the use of a trademark in a picture, what is made available to the public without use for advertising purposes, is connected with the sale of a commodity. The trademark is publicly therefore, like that in the view is always a limited only when the trademark for an advertising use, and would be only a narrow application when the use of a trademark in a picture is in connection with a matter of public interest. What such use is constitutionally limited and must supersede any private publicity considerations is conceded even if once and use is widespread recognition on a cleared property and the trademark."

Specifically on the subject of biography, it has long been held, even as to living persons, that publication of biographical and other factual information about public figures or other matters of public interest is outside the ambit of the right of privacy. Sidis v. F-R Publishing Corp., 113 F.2d 806 (2d Cir., 1940). Masson v. Columbia Broadcasting

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

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time, day in, and out, and the people who are in the

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...the fact that the ...

1. "Right of publication," which is the right of the author to publish his work in any form and in any medium without the consent of the publisher.

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The limitation of a biography to early outside the limits of the "journal" and to be explained in the light of publicity, and such right can have an application to the publication of factual material which is publicly disclosed, as in a public figure's life and privately must be left to the public interest and to the right of publicity now where such conflicts with the free dissemination of thought and ideas newsworthy events and matters of public interest because of such considerations and the subject can have no exclusive rights to his own life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a newspaper and the subject is not entitled to control the publication of his life story and others need no consent or permission of the subject to write a biography or a

Plaintiff is not unaware, of course, of the weight of law against him and seeks to evade its application by what can only be described as an exercise in semantics. The book, Marilyn, according to the Complaint (44 p.9), is not a book at

"The only purpose for which a picture illustrating an article or matter of public interest is not to be used for the purpose of trade or for selling within the jurisdiction of the statute, unless it has no real relation to the article or unless the article is a good or service in disguise."
Murray v. New York Magazine Co., 47 N.Y.2d 405, 407-409 (1976).

The Murray case, which the Court of Appeals reversed the lower court's motion for summary judgment, involved a photograph whose relationship to the story being told was far more tenuous than the photographs here. In